APPEAL NO. 020825
FILED MAY 28, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 11, 2002. The appellant (carrier) appeals the hearing officer's determinations that the respondent (claimant) sustained a compensable injury on _____; that the compensable injury extends to and includes a cervical spine fracture at C3 and an injury to the thoracic and lumbar spine; and that the claimant had disability from _____, through the date of the CCH. The claimant files an untimely response, urging affirmance.

DECISION

Affirmed.

The claimant testified that on _____, while taking his lunch break, he was injured when the bench he was sitting on collapsed. He stated that he has not worked since his fall. Workers who left the job site were required to clock out for lunch, while those who remained on the premises were not. The gravamen of the carrier's contention on appeal is that the claimant violated company policy because he was not taking his break in the breakroom provided to employees and therefore had deviated from the course and scope of his employment. The claimant testified that he was never given an order that he must eat in the breakroom; that he had eaten in the warehouse before; and that if there was a policy against eating outside the breakroom he had no knowledge of it.

The general rule is that "violation of instructions which are intended to limit the scope of employment will prevent a recovery of compensation." *See* Maryland Casualty Company v. Brown, 115 S.W.2d 394 (Tex. 1938); Texas Workers' Compensation Commission Appeal No. 020197, decided March 11, 2002. However, a violation of the instructions of an employer by an employee will not destroy the right to compensation, if the instructions relate merely to the manner of doing work. *Id*. At the CCH, the hearing officer considered whether the claimant had violated company policies and determined that the claimant was injured while furthering the affairs of the employer, concluding that the claimant sustained a compensable injury and had disability.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. We conclude that the hearing officer's decision on all the disputed issues is supported by sufficient evidence and legal precedent and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001996, decided October 5, 2000.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN SAFETY CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Roy L. Warren
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge